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SUPREME COURT OF THE
OF THE STATE OF WASHINGTON

PUBLIC UTLITY DISTRICT NO. 1 OF SNOHOMISH COUNTY, a Washington Municipal corporation; BARRY CHRISMAN and KERRY CHRISMAN, individually and as husband and wife,

Respondents,

v.

THE STATE OF WASHINGTON; SIERRA PACIFIC INDUSTRIES DBA SIERRA PACIFIC INDUSTRIES, INC., a California corporation; PRECISION FORESTRY, INC., a Washington corporation, and ABC CORPORATIONS 1-10,

Petitioners.

RESPONDENTS BARRY AND KERRY CHRISMANS' ANSWER TO PETITIONS FOR REVIEW

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I. INTRODUCTION

The Court of Appeals reversed because this case is distinguishable from *Ruiz v. State*, 154 Wn. App. 454, 225 P.3d 458 (2010) for three reasons.

First, material questions of fact are prevalent in this case but not in *Ruiz*. The tree that injured the plaintiff in *Ruiz* was "required" to be left standing because the Riparian Management Zone (RMZ) was properly drawn. *See* 154 Wn. App. at 461. In *Ruiz*, it was undisputed that the offending tree was located ***within*** a ***properly drawn*** RMZ. *See Id*. In this case, two independent forestry experts opine that the tree that nearly killed Respondent Barry Chrisman was located outside the RMZ. CP 389-408; CP 437-50. Thus, Division One properly held that the plain language of RCW 76.09.330 precluded summary judgment.

Second, the corporate entities in *Ruiz* owned and controlled the RMZ. *See* 154 Wn. App. at 456. As such, those corporate entities were "forestland owners" entitled to immunity under RCW 76.09.330 and RCW 76.09.020(16). Here, it is

undisputed that Petitioners Sierra and Precision did not own or control the RMZ/CMZ, only land adjacent to the RMZ/CMZ. As a result, Sierra and Precision are not entitled to immunity because they do not meet the definition of "forestland owner" under RCW 76.09.020(16).

Third, the plaintiff in *Ruiz* claimed negligent acts that are clearly immunized. Specifically, the plaintiff in *Ruiz* argued that the defendant should not have left the offending tree standing. *See Id*. at 459. In this case, Respondents do not make this argument. Instead, Respondents' theory of negligence is tied to acts distinct from leaving the offending tree standing, such as the State allowing Sierra and Precision to log all trees in the sale area, which left the remaining trees without their historical wind buffer in violation of the State's Habitat Conservation Plan. Thus, unlike *Ruiz*, none of the Petitioners are entitled to immunity under RCW 76.09.330's plain language.

These three reasons—all explained by the Court of Appeals in its opinion—demonstrate that *Ruiz* is distinguishable

and not conflicting. Yet, Petitioners cite all three as bases for review under RAP 13.4(b)(2). Based on the foregoing, and as explained further below, no conflict warranting review under RAP 13.4(b)(2) exists.

Petitioners' requests for discretionary review under RAP 13.4(b)(4) also fail. The three general "issue[s] of substantial public interest" that Petitioners assert—interests related to the timber industry's profitability, the environment, and administrative finality—are self-serving, illogical, and based on speculation. When scrutinized, it becomes apparent that the issues Petitioners assert are neither public nor substantial. For instance, slight reductions in revenue caused by leaving 100 feet of trees to provide a wind buffer as mandated by the State's Habitat Conservation Plan (CP 139) only presents an issue to the timber industry's profitability. Petitioners' additional asserted public interests are similarly flawed, rendering review improper and unnecessary. *See* RAP 13.4(b)(4).

II. ISSUES PRESENTED FOR REVIEW

1. Whether Division One's opinion in this case is distinguishable from Division One's opinion in *Ruiz v. State*, rather than conflicting?

2. Whether Petitioners asserted interests related to (1) the profitability of the forestry industry; (2) the environment; and (3) administrative finality establish "an issue of substantial public interest that should be determined by the Supreme Court"?

III. STATEMENT OF THE CASE

A. The State Recklessly Left a Narrow Sliver of Trees Next to a Busy Highway Leading to Predictable and Catastrophic Results.

In 2016, Petitioner State of Washington (the State) began preparing several sections of ***State-owned*** land for timber auction and clear-cutting. CP 218-19; CP 1140-43. One of the sections was named "Lugnut," which was divided into three units. CP 1140-43. At issue in this case is Lugnut Unit 2 (Unit 2). CP 1384.

Prior to auction, the State evaluated Unit 2's surrounding features, including Olney Creek and Sultan Basin Road. CP 369-75. Olney Creek is classified as an "S Stream," which requires a Riparian Management Zone (RMZ) for environmental benefits. CP 391. According to applicable regulations, an S Stream's RMZ is required to extend ***140 feet***, "measured from the outside of [a] Channel Migration Zone [(CMZ)] or the edge of the 100-year flood plain where there is no CMZ." *Id*.; CP 370; WAC 222-16-010.

After the evaluation, the State drew a ***162-foot*** RMZ. CP 370; CP 373. Importantly, the State also (erroneously) concluded that a CMZ existed next to Olney Creek and drew the RMZ from the edge of the purported CMZ. CP 375; CP 445-47. This delineation of the RMZ/CMZ left a narrow sliver of 120-foot-tall trees adjacent to Sultan Basin Road, with the sliver's historical wind buffer scheduled to be clear-cut. CP 439-41.

The State's own biologist, Lisa Egtvedt, recognized the foolishness of this delineation and authored a memorandum that

predicted the events that nearly killed Mr. Chrisman. CP 304. Instead of heeding Ms. Edtvedt's cry-for-help, the State ignored their own expert's advice and charged ahead with its 162-foot RMZ, measured from the outside of a purported CMZ.

B. Sierra Purchased Timber in the "Sale Area," Which Excluded the RMZ.

Petitioner Sierra Pacific Industries (Sierra) purchased the right to harvest certain timber in Unit 2. CP 1145-74. Following the sale, Sierra and the State executed a Bill of Sale, also referred to as a Timber Sale Agreement. *Id*. Under the Timber Sale Agreement, Sierra's purchase was limited to the "contract area" or "sale area" which ***specifically excluded the State's RMZ/CMZ***. CP 1146 (§G-011); CP 1016-18, CP 1381.

Sierra then subcontracted with Petitioner Precision Forestry (Precision) to clear-cut the sale area. CP 1176-1206. Through their subcontract, Precision assumed all aspects of the Timber Sale Agreement, including the limitation to clear-cut and dispose of timber only in the sale area. CP 1176-1205.

C. This Predictable Tragedy Was Captured on a Video Taken by Precision Employees as the Debacle Unfolded.

Precision clear-cut all trees in the sale area, which allowed a sliver of trees to remain next to Sultan Basin Road without a wind buffer. CP 638; CP 440-41. On March 13, 2018, Precision was working in the sale area near Sultan Basin Road conducting post-cutting timber harvesting activities. CP 976-77. Upon arriving at the jobsite that morning, Precision's owner, Blair Stadin, and Precision employee, John Spilman, noticed that wind speeds were "extremely high." CP 636, 639, 641; CP 488. The situation became so ominous that Mr. Spilman decided to ***videotape*** the scene as gigantic trees began snapping and crashing onto Sultan Basin Road. CP 262-65.

Not long thereafter, Mr. Chrisman approached Sultan Basin Road Milepost 8 in his Snohomish County PUD vehicle. CP 1274-77. Out of nowhere, he was crushed inside his vehicle by a massive blowdown of "the sliver" of trees. *Id*.; CP 854; CP 856. Mr. Spilman witnessed the whole event and began filming

a second video. CP 262-65. As can be seen and heard on the video, Mr. Spilman was incensed about the State's decision to leave the sliver of trees next to Sultan Basin Road, yelling:

> ***This is what happens when you cut tall trees and leave a border along the goddamn road like this***. [The] PUD guy just got smashed and is headed out in the fucking ambulance. Look at all this shit. The whole fucking patch blew over [and] smashed him.

Id. (emphasis added).

The impact left Mr. Chrisman unconscious and gushing blood from his nose and ears. CP 1275. He was airlifted to Harborview, admitted to the ICU, placed into a medically induced coma, and diagnosed with a host of catastrophic injuries ranging from multiple spinal, torso, and facial fractures, to lung damage, and a severe brain injury. *Id*.; CP 386-87. During his 117 consecutive days admitted as an inpatient, Mr. Chrisman had to be resuscitated multiple times. He endured numerous surgeries and other complex medical procedures. Unfortunately, Mr. Chrisman is now permanently disabled; he will never be able to return to work or lead a normal life.

D. The Court of Appeals Reversed and Remanded Because *Ruiz v. State* is Distinguishable and Issues of Material Fact Precluded Summary Judgment.

Petitioners moved for summary judgment under RCW 76.09.330, the Forest Practices Act's immunity provision. CP 1112-34; CP 1335-69; CP 1388-98. In opposition, both the Chrismans and the PUD produced opinions from independent forestry experts. CP 389-408; CP 437-50. Among other opinions, both experts concluded that no CMZ exists in the area where Mr. Chrisman was injured based upon basic forestry principles. CP 390-93; CP 446. Nevertheless, the trial court granted Petitioners' Motions. CP 115-18.

The Court of Appeals reversed. In doing so, the Court of Appeals found that *Ruiz v. State*, 154 Wn. App. 454, 225 P.3d 458 (2010) is distinguishable in multiple respects. *Pub. Util. Dist. No. 1 of Snohomish Cnty. v. State*, ___ Wn. App. 2d ___, 534 P.3d 1210, 1217, 1219-21 (Sept. 5, 2023). Petitioners now file Petitions for Review.

IV. ARGUMENT

A. Petitioners Largely Ignore RAP 13.4(b), Instead Devoting Significant Portions of their Petitions to the Merits.

As this Court knows, RAP 13.4(b) sets forth four considerations that dictate whether review will be granted. RAP 13.4(b)(1)-(4). Although Petitioners identify two considerations that purportedly warrant review, Petitioners generally set those considerations aside in favor of rehashing their positions on the merits.

For example, the State constantly argues that the Court of Appeals' opinion was erroneous in various respects, with almost no briefing focused on RAP 13.4(b)'s considerations. *See*, *e.g.*, State's Petition at 21, 25-29. Precision's Petition suffers from a similarly flawed approach. *See* Precision's Petition at 14-17. In essence, Petitioners garnish their petitions with citations to RAP 13.4(b), but truly only dispute the merits.

B. The Court of Appeals' Opinion Distinguishes This Case From *Ruiz*; Distinguishing Facts Between Two Cases Does Not Equate to a Conflict.

Petitioners continue to turn a blind eye to the distinguishing facts between *Ruiz* and this case. Petitioners omit key distinguishing facts between *Ruiz* and this case because those facts establish the absence of any conflict warranting review under RAP 13.4(b)(2).

Ordinarily, cases accepted for review under RAP 13.4(b)(2) involve conflicts or "splits" between divisions of the Court of Appeals. *See*, *e.g.*, *State v. Cornwell*, 190 Wn.2d 296, 302-03, 412 P.3d 1265 (2018); *see also State v. Larson*, 184 Wn.2d 843, 847, 365 P.3d 740 (2015); *State v. Jones*, 172 Wn.2d 236, 238-39, 257 P.3d 616 (2011). Although the overwhelming majority of cases implicating RAP 13.4(b)(2) involve division splits, there are exceedingly rare instances where panels within a single division author conflicting opinions. *See Grigsby v. Herzog*, 190 Wn. App. 786, 808-11, 362 P.3d 763 (2015) (citations omitted); *see also and compare State v. Hochhalter*,

131 Wn. App. 506, 128 P.3d 104 (2006), *with State v. Giles*, 132 Wn. App. 738, 132 P.3d 1151 (2006), *rev. denied*, 160 Wn.2d 1006, 158 P.3d 615 (2007). These intra-division conflicts are conspicuous, as "the [later and conflicting] opinion will usually state simply that the panel 'disagrees with,' 'departs from,' or 'declines to follow' the other opinion." *Id*. at 809-10 (collecting cases, citations omitted).

It is undisputed that this case does not present a split between divisions of the Court of Appeals. It is also indisputable that the Court of Appeals' opinion in this case did not "disagree with," "depart from," or "decline to follow" *Ruiz*. Instead, the Court of Appeals appreciated that, in its words: "*Ruiz* is distinguishable and does not control." *Pub. Util. Dist. No. 1 of Snohomish Cnty.*, 534 P.3d at 1217. *Ruiz* is in fact distinguishable, rather than conflicting, for several reasons that Petitioners mistakenly identify as conflicts.

1. ***Ruiz* Did Not Involve a Genuine Issue of Material Fact as to Designation of the RMZ/CMZ.**

The immunity statute at issue in Petitioners' Motions for Summary Judgment, RCW 76.09.330, provides that:

> Forestland owners ***may be required*** to leave trees standing in riparian and upland areas to benefit public resources … Notwithstanding any statutory provision, rule, or common law doctrine to the contrary, the landowner, the department, and the state of Washington shall not be held liable for any injury or damages resulting from these actions, including but not limited to … personal injury, property damage, … and other injury or damages of any kind or character resulting from the trees being left.

(emphasis added). WAC 222-16-010 then informs the "required" width for an RMZ depending on the waterway's site class:

"Riparian management zone (RMZ)" means:
(1) **For Western Washington**
(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below):

Site Class	Western Washington Total RMZ Width
I	200′
II	170′
III	140′
IV	110′
V	90′

Unlike this case, the *Ruiz* Court did not have to grapple with a narrow construction of RCW 76.09.330 and the plain language of "required." This is attributable to the fact that the plaintiff in *Ruiz* did not, and could not, dispute the propriety of the RMZ at issue in his case.

In *Ruiz*, the parties agreed that the RMZ was properly drawn (200-foot RMZ for a Site Class I waterway) and that the offending tree was located in the RMZ, meaning the tree was "required" to be left standing. *See* 154 Wn. App. at 456; *see also* WAC 222-16-010. The *Ruiz* Court could not have made this concession any clearer—and set up the distinguishing factors that this case presents—when it stated:

> The application process here clearly established a zone within which Hancock was prevented from harvesting timber. ***That zone is not disputed by the parties***.

Id. at 461 (emphasis added).

In contrast, the central dispute in this case is the propriety of the State's 162-foot RMZ, drawn from the edge of a CMZ (rather than the edge of the 100-year flood plain). As the Court

of Appeals held, "there is a genuine issue of material fact as to whether a CMZ exists in Olney Creek, and by extension, whether the tree that struck Chrisman was outside of the 162-foot RMZ." 534 P.3d at 1221. Of course, if the offending tree was outside of the 162-foot RMZ via an erroneously delineated CMZ, the offending tree was not "required" to be left standing under RCW 76.09.330's plain language and immunity does not apply. *See Id*. (holding "there is a genuine issue of material fact as to whether the RMZ was correctly designated and, by extension, whether FPA immunity applies to the State on that alternate basis."). Thus, the central dispute in this case was never litigated in *Ruiz*, showing a clear distinction, rather than a conflict, between the two cases.

The only argument the State presents on this point is directed at the merits and riddled with nonsensical assertions devoid of any legal precedent. *See Id*. at 1219-20 (explaining that the State failed to cite authority for two of its contentions). Sierra asserts that "[t]he Court of Appeals' opinion conflicts with

its prior holdings in *Ruiz* by interpreting RCW 76.09.330 much more narrowly than in *Ruiz*…". Sierra's Petition at 27. This assertion again ignores that the *Ruiz* Court never reached a strict, plain language construction of the word "required"—the correct construction of a statutory grant of immunity in derogation of the common law—because the parties stipulated to the propriety of the RMZ. *See*, *e.g.*, *Michaels v. CH2M Hill*, *Inc.*, 171 Wn.2d 587, 600, 257 P.3d 532 (2011) (reiterating that "[s]tatutory grants of immunity in derogation of the common law are strictly construed."). Precision appears to omit any mention of this distinction in its Petition.

In effect, none of the Petitioners assert, let alone show, an actual conflict between *Ruiz* and this case when it comes to the Court of Appeals' reversal of summary judgment because of "a genuine issue of material fact as to whether a CMZ exists in Olney Creek." 534 P.3d at 1221. It is impossible for such a conflict to exist because the *Ruiz* Court was never presented with

the central dispute in this case. As such, Petitioners cannot satisfy RAP 13.4(b)(2).

2. Precision and Sierra Are Distinct From the Forestland Owners in *Ruiz* Because They Had No Control Over the RMZ/CMZ Land.

Precision and Sierra also fail to grasp the distinction between themselves and the entity found to be a forestland owner in *Ruiz*, Hancock Forest Management, despite the Court of Appeals' detailed analysis explaining the distinction. *See* 534 P.3d at 1217-18. RCW 76.09.330 provides that only "[f]orestland owners" are entitled to immunity. In turn, RCW 76.09.020(16) defines "forestland owner" as:

> any person in actual control of forestland, whether such control is based on either legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner…

In *Ruiz*, White River Forests, LLC owned the entirety of the land where timber harvesting activities were set to occur, ***including what became the RMZ***. *See* 154 Wn. App. at 456. White River hired Hancock to manage and control that land. *See*

Id. Thus, the tree that struck the plaintiff stood within land designated as an RMZ that was ***owned, managed, and controlled by White River and Hancock*** – the State was only involved to ensure that an RMZ was designated. *See Id*. at 456, 461-62.

As a result, the plaintiff in *Ruiz* could only contend that Hancock styled itself as a management company rather than a landowner – it was indisputable that Hancock had "control" of the RMZ. *See Id*. at 461; *see also Pub*. *Util*. *Dist*. *No*. *1 of Snohomish Cnty*., 534 P.3d at 1217 (citing Br. Of Appellant at 28, *Ruiz v*. *State*, 154 Wn. App. 454, 225 P.3d 458 (2010), No. 63783-6-I).[1] Since Hancock had control of the RMZ via White River's ownership, it was, of course, a "forestland owner" of the RMZ. *See* 154 Wn. App. at 461-62.

On the other hand, in this case the tree that struck Mr. Chrisman stood on land designated as an RMZ that was (1) ***exclusively owned, managed, and controlled by the State***; and

[1] https://www.courts.wa.gov/content/Briefs/A01/637835%20appellants.pdf.

that (2) Precision and Sierra indisputably had no "right to sell or otherwise dispose of" the timber from, unlike White River and Hancock in both respects. CP 1146 (§G-011); CP 1016-18, CP 1381. The State supports this distinction from *Ruiz* itself, explaining that "the Department [of Natural Resources] acted ***both as landowner/applicant*** … RCW 76.09.330's immunity applies to both roles." State's Petition at 22, n.1 (emphasis added). Precision and Sierra have similarly admitted and conceded throughout this litigation that they only had the right "to sell or otherwise dispose of" timber in the sale area, but not the RMZ. *See* 534 P.3d at 1217 (reiterating Precision's concession that "it did not have the right to harvest in the RMZ," and Sierra's concession that the only trees left standing were "within the RMZ and outside the timber sale area.").

Consequently, as the Court of Appeals explained, Precision and Sierra only had "control" over the sale area. *See Id*. at 1217-18. The pertinent Timber Sale Map and Timber Sale Agreement defined the sale area as land severed from the RMZ

where the offending tree stood. *See Id*.; CP 1146 (§G-011); CP 1016-18, CP 1381. Therefore, Precision and Sierra were "forestland owners" of land adjacent to the RMZ, but not the RMZ itself, distinct from White River and Hancock in *Ruiz*. Given this distinction, no conflict as to Division One's interpretation of "forestland owner" is present, and review remains improper.

3. The Distinct Claims Between the Plaintiffs in *Ruiz* and This Case Establish the Lack of a Conflict Related to Immunized Actions.

Finally, all three Petitioners continue to incorrectly equate the *Ruiz* plaintiff's claim with the Respondents' claims in this case. Petitioners' surface level argument made to fabricate a conflict is easily disposed of by examining RCW 76.09.330's plain language and the claims made in each case.

With respect to the conduct immunized by RCW 76.09.330, the statute states: "Forestland owners ***may be required to leave trees standing*** in riparian and upland areas … [n]otwithstanding any statutory provision, rule, or common law

doctrine to the contrary, the landowner, the department and the state of Washington shall not be held liable for any injury or damages ***resulting from these actions***." (emphasis added). As the Court of Appeals explained in this case, "[t]he plain language of the statute is unambiguous and protects only 'these actions:' leaving a riparian tree as required." 534 P.3d at 1218.

In *Ruiz*, the "essence" of the plaintiff's argument was "that because the RMZ was near a road, it was foreseeable that trees would fall resulting in damage, and, thus, the State and [the landowner] should have considered this and waived any environmental regulations [that prevented them from removing the offending trees]." 154 Wn. App. at 459. In other words, the plaintiff's claim centered on an argument that the defendants ***should not have left the offending trees standing***, and instead should have "waived any environmental regulations" and cut the offending trees down. *See Id*. at 459-460 (detailing why the *Ruiz* plaintiff's claim that "***leaving*** exposed trees at the edge of a riparian zone" is immunized) (emphasis added). Consistent with

the Court of Appeals' plain language analysis in the instant case, the *Ruiz* Court concluded that leaving trees standing is immunized and rejected the plaintiff's claim. *See Id*.

Here, however, the "essence" of Respondents' claims focuses on conduct separate and distinct from leaving the offending tree standing. Namely, the State's decision to designate an RMZ/CMZ without a wind buffer, and to allow Sierra and Precision to log all trees in Unit 2 without a wind buffer, leaving the offending tree vulnerable to obvious and foreseeable forest-edge effects. The Court of Appeals appreciated this distinction, explaining that "[t]hese acts are distinct from the decision to leave the RMZ trees standing, and, under the plain language of the statute, are not immunized." 534 P.3d at 1218-19.

Petitioners all argue something along the lines of: "[t]here is no meaningful difference between 'creating a dangerous condition by leaving exposed trees at the edge of a riparian zone' (*Ruiz*) and 'rendering the RMZ trees vulnerable to forest-edge

effects' (instant case)." Sierra's Petition at 30 (citations omitted); *see also* State's Petition at 19-21; Precision's Petition at 6-7. This oversimplistic view completely misses the mark. Although the injury-causing events in *Ruiz* and this case are similar (blown down trees), the claimed negligent acts that led to the injury-causing events are distinct. Under the plain language of RCW 76.09.330, one of those acts is immunized – leaving an RMZ tree standing via, for example, failing to waive environmental regulations. *Ruiz*, 154 Wn. App. at 459-60. Other acts, such as failing to properly designate a wind buffer, are not immunized, because those acts are unassociated with leaving an RMZ tree standing. *Pub. Util. Dist. No. 1 of Snohomish Cnty.*, 534 P.3d at 1218-19. Accordingly, instead of conflicting with *Ruiz*, the Court of Appeals distinguished *Ruiz* and addressed a legal question that was not at issue in *Ruiz*. Absent any actual conflict, there is no valid basis to grant review under RAP 13.4(b)(2).

C. Petitioners' Only Real Interest is Their Hope That This Court Will Grant Them an Unfettered Immunity Shield To Maximize Profits.

This Court's precedent shows that the language of RAP 13.4(b)(4) is to be strictly followed – a petition must truly present a substantial, wide-reaching issue of public interest. *See*, *e.g.*, *Matter of Arnold*, 189 Wn.2d 1023, 408 P.3d 1091, 1092 (2017) (granting review because holdings in a line of cases "affect public safety by removing an entire class of sex offenders from the registration requirements…"); *see also Matter of Williams*, 197 Wn.2d 1001, 484 P.3d 445, 445-47 (2021) (granting review of personal restraint petition because "[t]he COVID-19 pandemic has profoundly affected all segments of American society, including the men and women confined in correctional facilities…"); *In re Flippo*, 185 Wn.2d 1032, 380 P.3d 413, 414 (2016) (accepting review in case challenging the imposition of legal financial obligations due to "numerous now-pending personal restraint petitions challenging the imposition of LFOs" under similar circumstances).

Petitioners assert a variety of purported public interests that can be categorized into three themes: (1) interests concerning timber industry profitability, (2) interests concerning the environment, and (3) interests concerning administrative finality. When Petitioners' public interests are scrutinized, none of them come close to a "substantial public interest that should be determined by the Supreme Court," akin to the cases cited above. RAP 13.4(b)(4).

1. Petitioners' First Interest, Protecting the Forestry Industry and Maximizing Profits, is Neither Public Nor Substantial.

Sierra and Precision both concede that this case only presents a financial issue to the forestry industry rather than the public. For instance, Precision outright admits that "***[f]orestland owners*** need certainty in how to operate under the Forest Practices Act…". Precision's Petition at 23 (emphasis added). Precision then goes on to explain this interest in further detail, pointing out that not accepting review "could expose foresters to fines…". *Id*. at 21 (emphasis added). Sierra compounds

Precision's hyper-focus on the forestry industry, arguing that "[t]he Court of Appeals' ruling will have a chilling effect ***on the forest industry***."[2] Sierra's Petition at 22 (emphasis added). Similar to Precision's concern about fines, Sierra's hypothetical "chilling effect" relates largely to the fact that cases like this will "cut into revenue and wages…". *Id*. at 26.

Suffice it to say, the public has no substantial financial interest in requiring the forestry industry to conduct timber harvesting activities in a safe manner. Considering that no less than hundreds of acres of trees were clear-cut in this case, any financial loss from leaving merely 100 more feet of trees (the Habitat Conservation Plan size for a wind buffer (CP 139)) to ensure a safe wind buffer exists next to a busy public highway is miniscule. Taken together, Precision and Sierra's forestry industry-related interests are neither public nor substantial.

[2] Sierra also tries to lead this Court into applying a completely different standard applicable to moot cases. Sierra's Petition at 22. As Sierra recognizes, this case is not moot and therefore the standard Sierra advocates for is inapplicable. *Id*.

2. Petitioners Claiming an Environmental Interest is Hypocrisy at its Finest.

Sierra and the State also assert interests related to the environment. *See*, *e.g.*, Sierra's Petition at 23-24. The State goes so far as to claim that leaving trees next to a public roadway with no wind buffer is such an important environmental interest that the "***only way*** to secure [it] is to hold that immunity applies to damages caused by any naturally falling leave tree, ***regardless of what actions or processes caused those damages to occur***." State's Petition at 30 (emphasis added).

The hypocrisy in Sierra's and the State's environment-based interest is obvious and alarming. All three Petitioners are entities that reap massive profits from clear-cutting Washington's forests, yet when they face liability, all of a sudden they are concerned about the environment. But even if their concern was genuine, this Court has denied review in at least one case presenting far greater environmental issues, in part because Washington's "jurisprudence is focused on human life and

human rights and does not recognize rights in nature." *Aji P. v. State*, 198 Wn.2d 1025, 497 P.3d 350, 351, n.1 (2021).

Moreover, Sierra and the State fail to show any true threat to riparian environments if review is denied. Both Petitioners cite statistics that, at first blush, show the substantial amount of riparian environment in Washington. Sierra's Petition at 24-25; State's Petition at 4-5. But Sierra and the State conveniently omit how much of that riparian environment features a well-traveled, public roadway. Taking it one step further, Sierra and the State conveniently omit how much of the riparian environment featuring a well-traveled, public roadway will have RMZs/CMZs that leave a narrow sliver of trees next to the roadway without a wind buffer. No doubt this specific type of riparian environment—the only type of riparian environment at issue in this case—is a meager fraction of the statistics Sierra and the State provide in their Petitions.

If Petitioners were truly concerned about the environment, they would surely admit that leaving more trees standing (*i.e.*,

wind buffers) balances the environmental benefits of RMZs/CMZs with the safety of citizens using public roads. This consideration was conspicuously omitted in the Petitioners' Petitions, because striking this balance would decrease revenue. Stated simply, Sierra's and the State's environmental interests are not only hypocritical and legally inconsequential, but they are also speculative and misleading. *See*, *e.g.*, Sierra's Petition at 23-24 (contending that the Court of Appeals' decision "***may*** prevent trees from falling onto rivers and streams…") (emphasis added).

3. This Case Does Not Implicate Administrative Finality; The State's Continued Attempts to Shoehorn Plaintiffs' Claims for Damages Into Claims for Injunctive Relief Must be Disregarded.

Lastly, the State repeats its position on the merits regarding the Administrative Procedure Act, then claims that the Court of Appeals' opinion "threatens the substantial public interest of administrative finality by allowing Plaintiffs to challenge final agency regulations in tort suits for damages."

State's Petition at 25-30. While the Chrismans will not counter the State on the merits of its APA argument again, they would be remiss if they did not mention that this lawsuit does not challenge the finality of the State's RMZ/CMZ.

The State (again) asserts that Respondents are attempting to collaterally challenge the Lugnut permit and thereby get some form of unspecified injunctive relief. *See* State's Petition at 28. This claim lacks a scintilla of basis in law or fact. Respondents are not demanding that the State re-designate the RMZ/CMZ, that the State amend the Lugnut Permit, that the trial court overturn the Lugnut Permit, or some other form of injunctive relief subject to the APA's bar on judicial review. CP 1447-55; CP 1466-72; CP 1503-07. Rather, Respondents have simply argued that the offending tree was not required to be left standing because the State misdrew the RMZ/CMZ, which speaks only to the scope and inapplicability of immunity. Therefore, the State's-claimed "substantial public interest of administrative

finality" is simply not at issue in this case and, as a result, cannot warrant review by this Court.

D. The Chrismans Adopt the Arguments in PUD's Answer.

Pursuant to RAP 10.1(g), the Chrismans adopt the arguments presented in Respondent PUD's Answer.

V. CONCLUSION

Petitioners' Petitions for Review should be denied.

I certify that this memorandum contains 4,980 words, in compliance with RAP 18.17.

DATED this 19th day of January 2024.

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